

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRANDON RISHAWN CREWS,

Plaintiff,

v.

PATTY JACKSON, et al.,

Defendants.

CASE NO. 3:23-cv-6145

ORDER

Plaintiff Brandon Rishawn Crews is a pre-trial detainee at Pierce County Jail. He brought claims against Defendants Pierce County, Correctional Officer Desmond, Correctional Officer Smith, Sergeant Patty Jackson, and NaphCare. He alleges that the conditions at Pierce County Jail have placed him at risk of contracting and spreading diseases.

This matter comes before the Court on United States Magistrate Judge Theresa L. Fricke's Report and Recommendation. Dkt. No. 17. Judge Fricke recommends that this Court grant NaphCare's motion to dismiss for a couple of reasons. Crews has not made any allegations concerning any official policy or that NaphCare itself made intentional decisions about Crews's confinement. Even if

1 Crews did identify a policy, practice or custom, he did not allege that this policy  
2 amounted to a deliberate indifference to his constitutional rights under the  
3 Fourteenth Amendment, or that the policy is or was the moving force behind the  
4 constitutional violation.

5 No one has objected to the R&R and the time for objecting has passed. *See*  
6 *generally* Dkt. Because there were no objections, the Court may adopt the R&R if it  
7 is satisfied there are not clear errors on the face of the record. Fed. R. Civ. P. 72(b)  
8 Advisory Committee's Note to 1983 Amendment. The Court agrees with Judge  
9 Fricke's reasoning that the Eighth Amendment claim should be dismissed with  
10 prejudice because Plaintiff is a pre-trial detainee. *See Bell v. Wolfish*, 441 U.S. 520,  
11 535 n.16 (1979) ("The Court of Appeals properly relied on the Due Process Clause  
12 rather than the Eighth Amendment in considering the claims of pretrial  
13 detainees."). But Plaintiff's Fourteenth Amendment claim is dismissed without  
14 prejudice because Plaintiff may be able to overcome some of the deficiencies of the  
15 complaint if he is given an opportunity to amend.

16 Based on its review of the R&R and the remaining record, the Court finds  
17 and ORDERS:

- 18 1) The Court ADOPTS the R&R. Dkt. No. 17.
- 19 2) NaphCare's motion to dismiss is GRANTED without prejudice; and,
- 20 3) Plaintiff is granted leave to amend his claims against NaphCare.

21 Dated this 21st day of June, 2024.

A handwritten signature in black ink, appearing to read "Jamal W", is positioned above a solid horizontal line.

Jamal N. Whitehead  
United States District Judge

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